XI-HC—78

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.M.P.No.184/2007 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

SB : HON'BLE SHRI DHIRENDRA MISHRA, J.

PETITIONER Dantu Surya Rao, aged about 60 years, son of Late Dantu Bhaskar Rao, resident of Door No. 41-8-50/01, D.S.N. Complex, Commercial Road, P.S. Wontown, Kakinada, Andhra Pradesh.

Vs.

RESPONDENTS

1. Hanuman Prasad Agrawal, aged about 43 years, son of Shri Omprakash Agrawal, resident of Sharda Nagar, Shrikant Verma Marg, Near Sayee mandir, Bilaspur, P.S. Tarbahar, Bilaspur, Distt. Bilaspur (C.G.)
2. Jonnala Gada Raghu, son of Jonnala Gada Narsimhan, aged about 44 years, resident of Kakinada, Qtr No. 8-13-0/14-A, Pratap Nagar, P.S. Second Town, Kakinada (Andhra Pradesh)

1-8-2007

Shri Abhay Tiwari, Advocate for the petitioner.

The petitioner by this instant petition under Section 482 of Cr.P.C. has prayed for setting aside the order dated 9-3-2007 passed in Criminal Revision No. 257/2006 whereby the revision preferred by the petitioner against the order dated 1-7-2006 passed in Criminal Case No. 458/2006 by the Additional Chief Judicial Magistrate, Bilaspur rejecting the application of the petitioner under Sections 245 and 255(1) of Cr.P.C. has been rejected.

Learned counsel for the petitioner submits that from bare perusal of the criminal complaint filed by the respondent no. 1, it is evident that no specific allegations have been made against the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

present petitioner and no overt act has been attributed to him and he has been arrayed as an accused simply because he happens to be the proprietor of the firm. In the above circumstances, it is an abuse of process of law and both the Courts below ought to have quashed the criminal proceedings as against the present petitioner on the basis of the averments and evidence adduced before the trial Court. Reliance is placed upon the judgments in the matters of **N.K. Wahi –v- Shekhar Singh and others** (2007 AIR SCW 1880) and **Saroj Kumar Poddar –v- State (NCT of Delhi) and another** (2007)2 SCC (Cri.) 135).

Learned trial Court on the basis of the averment in the complaint has reached to the conclusion that the accused No. 1 is Director of the Company whereas the accused No. 2 is Proprietor of the company and the loan was taken by the firm and there is allegation in the complaint that the transaction of loan was within the knowledge of the present petitioner as both the accused persons were doing the business jointly and on the basis of these averments, prima facie inference has been drawn regarding involvement of the present petitioner in the crime in question.

In the matter of **N.K. Wahi** (supra), it has been held that the complaint must contain specific allegation against the Director as to how Directors are in-charge and responsible for conduct of business of the company and description should be clear. Mere allegations in complaint that the accused persons are directors and responsible

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
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officers of company is not sufficient and in that circumstances, process issued against the directors was quashed. In the matter of **Sarod Kumar Poddar** (supra) also, while dealing with the prosecution of the Director of the company, it has been held that cognizance of the offence against any director cannot be taken unless specific roll is attributed to the said director in the complaint itself. However from the perusal of the complaint filed against the present petitioner, there is specific mention that both the accused persons were involved in the transaction with the complainant and the present petitioner is the proprietor of the firm and the transaction of Rs. 5 lakhs took place within the knowledge of the present petitioner. Therefore, at this stage, it cannot be said that the complaint is bereft of any specific allegation against the present petitioner and the same deserves to be quashed at the threshold.

In the result, there is no illegality or infirmity in the impugned order which requires interference by this Court.

The petition being devoid of substance is liable to be dismissed and it is dismissed at admission stage.

Sd/-
Dhirendra Mishra
Judge

8/-